PUBLIC PROSECUTOR

v.

GAN AH LIK

HIGH COURT MALAYA, SHAH ALAM
WAN YAHYA J
[SELANGOR ULANGBICARA JENAYAH NO. 51-182-87]
20 JANUARY 1990

PUBLIC AUTHORITIES: *Contravention of by-laws - Repeal of Act - Whether there was therefore invalidation of by-Law - Interpretation & General Clauses Act - Whether subsidiary legislation also revoked - Construction of statutory instrument.*

The respondent was charged for having contravened By-Law 1(1) Part VII of the Town Board By-Laws Cap 137. At the return date, before the prosecution could lead evidence against him, the learned Magistrate acquitted and discharged the respondent.

It followed that the Magistrate concurred with the defence Counsel that the particular by-law in question had been invalidated by the repeal of Cap 137.

The question before the Court was whether the Town Board By-Law, which is a subsidiary legislation of the Town Board Enactment, which was repealed, revoked the laws made under the Enactment.

Held:

[1] The true construction of any written law must be established on the relevant provision of the interpretation laws in force at the time the law was made. Therefore the proper law to be applied in the construction of the Town Board By-Laws is the Interpretation and General Clauses Ordinance 1948.

[2] The Town Board By-Laws which were enacted in 1935 must be construed in accordance with the provision of the 1948 Ordinance and when so construed must inevitably lead to the conclusion that the by-laws are valid and still subsisting.

[3] The authority in *Watson v. Winch,* would appear to be no longer applicable to any written laws enacted after 1948 in Malaysia and probably to British Laws enacted after 1978.

[4] The Town Board By-Laws are still valid and subsisting and therefore s. 1(1) of the By-Laws are still enforceable against the respondent.

[5] The Magistrate's order of acquittal is set aside and the case is remitted back to her to be tried in accordance with the same provisions as originally charged.

[Order accordingly]

Cases referred to:
Daihatsu (Malaysia) Sdn. Bhd. v. Pendakwa Raya [1987] 1 MLJ 88
Cheam Gaik Chye v. Public Prosecutor [1966] 1 MLJ 1
Watson v. Winch [1916] 1 KB 688

Legislation referred to:
Interpretation and General Clauses Ordinance 1948, ss. 2, 11(2)
Interpretation Act 1967, ss. 2(2), 65(1),(2)
Interpretation Act 1978 [UK], ss. 17(2)(b), 22

Local Government Act 1976, ss. 16(1), 73
Town Board By-Laws (Cap 137) By-Law 1(1) Part VII
Town Boards Enactment of the (FMS Cap 137), s. 16(1)

For the appellant - Hanafiah b. Zakaria, Timbalan Pendakwa Raya
For the respondent - Thomas; M/s. Azman Davidson & Co.

JUDGMENT

Wan Yahya J:

On 21 October 1985, the respondent was found to be carrying on the trade of selling and storing gas cylinder without having first obtained a licence from the President of the Municipal Council, Klang. He was accordingly charged for having contravened By-law 1(1) Part VII of the Town Board By-Laws, Cap. 137. He subsequently appeared before the Magistrate at Klang but before any evidence could be led by the prosecution against him the learned Magistrate, acting on an objection made by his defence Counsel, acquitted and discharged the respondent.

The substance of Counsel's objection as I understand it, is that the repeal of the present Act, in this instance the Town Board Enactment of the Federated Malay States (FMS Cap. 137) had by implication revoked the subsidiary legislation made thereunder i.e., the Town Board By-Laws. The dominant force of his argument, however is based on the authority of a 1986 High Court decision in *Daihatsu (Malaysia) Sdn. Bhd. v. Pendakwa Raya* [1987] 1 MLJ 88, wherein it was held that the by-laws were invalidated by the repeal of Cap. 137.

The prosecution officer on his part arduously attempted to suggest to the learned Magistrate the possibility of this case having been decided *per incuriam.* He drew the Magistrate's attention to the Interpretation and General Clauses Ordinance, 1957 and another High Court decision on similar subject, and he even attempted to distinguish the case of *Watson v. Winch* which was cited in support of the aforementioned judgment; but the learned Magistrate who appeared to be compulsively committed to the principle of *stare decisis* decline to consider these arguments.

Now, it is true that by-law 1(1) of the Town Board By-Laws was made pursuant to s. 16(1) of the Town Board Enactment Cap 137 FMS and it is equally true that a substantial part of that Enactment including s. 16(1) had been repealed by the Local Government Act 1976. But such repeal to my mind could not be impliedly construed as having revoked The Town Board By-Law which is the subsidiary legislation made under the Enactment. This is so because the repealing Act i.e., the Local Government Act 1976 did not expressly revoke the by-laws made under the repealed Enactment and neither was any by laws inconsistent with the former by laws made under s. 73 of that Act. Therefore the validity of Town Board By-Laws are saved by the validating and deeming provision in s. 11(2) of the Interpretation and General Ordinance 1948 which reads:

> (2) Where a written law repeals in whole or in part and any former written law and substitutes other provisions therefore, any subsidiary legislation made under the former written law shall, so far as it is not consistent with such substituted provisions, remain in force until revoked or replaced by subsidiary legislation made under the repealing written law, and shall be deemed for all purposes to have been made thereunder.

At the hearing before this Court, Counsel raised the argument that only one interpretation law should apply in construing any statutory instrument and that the Interpretation Act 1967 should apply in this case.

I am unable to accept that proposition. The true construction of any written law must be established on the relevant provision of the interpretation laws in force at the time when the written law was made. Although the Interpretation and General Clauses Ordinance 1948 was repealed by s. 65(1) of the Interpretation Act 1967, sub-section (2) of that section goes on to state:

> Notwithstanding sub-section (1), the Ordinance thereby repealed shall continue to apply to any written law to which it applied immediately before the commencement of this Act and to subsidiary legislation made after the commencement of this Act under such a written law.

Moreover s. 2(2) of the Act expressly excluded the application of the Act on laws enacted prior to its commencement. Therefore proper law to be applied in the construction of the Town Board by-laws is the Interpretation and General Clauses Ordinance 1948 s. 2 of which reads:

> In this Ordinance, and in every written law as hereinafter defined, and in all public documents enacted, made or issued before or after the commencement of this Ordinance the following words and expression shall, as from the commencement of this Ordinance and without prejudice to anything done, prior thereto, have the meanings hereby assigned to them respectively, unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided:

Until a further interpretation law is enacted by Parliament, any existing written law in this country must be construed in accordance with either of the two interpretation laws in force at the time when such written law was passed. In respect of any written laws enacted after 18 May 1967 (the gazetted date of its operation) the Interpretation Act 1967 is the proper law to apply and as regards all laws enacted prior to this date the construction must be made in accordance with the Interpretation and General Clauses Ordinance 1948.

The Town Board By-laws which were enacted in 1935 must be construed in accordance with the provision of the 1948 Ordinance and when so construed must inevitably lead to the conclusion that the by-laws are valid and still subsisting.

This is by no means an unprecedential ruling. In *Cheam Gaik Chye v. Public Prosecutor* [1966] 1 MLJ 1, Ong Hock Sim J, invoked the provision of the Interpretation and General Clauses Ordinance 1948 in construing the validity of the rule made under the repealed Fisheries Ordinance, (SS Cap. 146).

Finally, perhaps I should mention here that the case of *Watson v. Winch* [1916] 1 KB 688 cited in *Daihatsu's* case was a decision founded on the principle of Common Law of England in respect of a written law enacted in 1888 that is before the 1889 and 1978 Interpretation Act of the United Kingdom came into operation. To put it in another way, that judgment refers to the legal point of view applicable to the repeal of subsidiary legislation before the Interpretation Acts of 1889 and 1978 of the United Kingdom came into operation. The legal stand point on this subject must necessarily be different after the Interpretation Act 1978 was enacted as s. 17(2)(b) and 22 of the United Kingdom 1978 Act had introduced a saving provision similar in effect to our s. 11 of our Interpretation and General Clause Ordinance 1948. At p. 690 [1916] 1 KB of the judgment in *Watson v. Winch's* case, Lord Reading CJ after reading with approval the decision in *Surtees v. Ellison* on the establishing general rule that a repealed act must be considered as if it had never existed, added the following qualification:

To that passage it is only necessary to make one qualification, namely, that since that case Lord Brougham's Act and the Interpretation Act 1889, have been passed, and one must now bear the later Act in mind.

For these reasons, the authority in *Watson v. Winch* would appear to be no longer applicable to any written laws enacted after 1948 in Malaysia and probably to British laws enacted after 1978.

On my part, I would hold that the Town Board By-Laws are still valid and subsisting and therefore s. 1(1) of the by-laws are still enforceable against the respondent. I shall therefore set aside the Magistrate's order of acquittal and remit the case back to her Court for the respondent to be tried in accordance with the same provisions as originally charged.

Also found at [1990] 1 CLJ 961